

AGENDA ITEM NO. VIII-A
COMMISSION MEETING 09-07-11

September 7, 2011

FROM: KEVIN FABINO, Planning Manager
Development Services Division

THROUGH: MIKE SANCHEZ, Planning Manager
Development Services Division

BY: ISRAEL TREJO, Planner
Development Services Division

APPROVED BY

[Signature]
DEPARTMENT DIRECTOR *John Pugh*

SUBJECT: CONSIDERATION OF CONDITIONAL USE PERMIT APPLICATION NO. C-11-015
AND ENVIRONMENTAL FINDING FOR ENVIRONMENTAL ASSESSMENT NO.
C-11-015

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. APPROVE the finding of a Categorical Exemption for Environmental Assessment No. C-11-015 issued August 31, 2011.
2. APPROVE Conditional Use Permit Application No. C-11-015 to allow for the operation of a "Night Club" in an existing building, subject to the following conditions:
 - a. Development shall comply with Exhibits A and F dated February 1, 2011.
 - b. Development shall comply with the conditions of approval for the project dated September 7, 2011.

EXECUTIVE SUMMARY

The applicant, Manuel Perales on behalf of Yosemite Falls Cafe, filed Conditional Use Permit Application No. C-11-015 requesting authorization to allow for the operation of a "Night Club" in an existing building. The subject property contains an existing restaurant, namely, the Yosemite Falls Café; the location will continue to operate as a restaurant, in addition to the proposed night club. The restaurant has an existing Alcohol Beverage Control license which allows for the on-site consumption of beer, wine and distilled spirits (ABC Type 47 license). The project site is located on the north side of West Ashlan Avenue between North Blythe Avenue and State Route 99. The site is zoned C-6 (*Heavy Commercial District*). The proposed project was reviewed under the provisions of the recently adopted text amendment as related to restaurants, taverns and night clubs. Pursuant to that text amendment, this project has been scheduled for review by the Fresno City Planning Commission. Staff recommends that the Planning Commission approve Conditional Use Permit Application No. C-11-015, subject to the conditions of approval noted above.

PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-11-015 requests authorization to allow for the operation of a "Night Club" in an existing building. The subject property contains an existing restaurant, namely, the Yosemite Falls Café. The restaurant has an existing Alcohol Beverage Control (ABC) license which allows for the on-site consumption of beer, wine and distilled spirits (ABC Type 47 license). The site will continue to operate as a restaurant, in addition to the proposed night club		
APPLICANT	Manuel Perales on behalf of the Yosemite Falls Cafe		
LOCATION	North side of West Ashlan Avenue between North Blythe Avenue and State Route 99 (4248 West Ashlan Avenue) (Council District 1, Councilmember Xiong)		
SITE SIZE	7,600 square foot building		
LAND USE	Existing	-	General-heavy Commercial
	Proposed	-	No change
ZONING	Existing	-	C-6 (<i>Heavy Commercial District</i>)
PLAN DESIGNATION AND CONSISTENCY	The request to allow for the operation of a "Night Club" is consistent with both the existing C-6 zone district and the General-heavy Commercial planned land use designation of the 2025 General Plan and the West Area Community Plan		
ENVIRONMENTAL FINDING	Categorical Exemption, dated August 31, 2011		
PLAN COMMITTEE RECOMMENDATION	The District 1 Plan and Implementation Committee reviewed and recommended approval of the project on March 8, 2011		
STAFF RECOMMENDATION	Approve Conditional Use Permit Application No. C-11-015		

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	State Route 99	State Route 99	State Route 99
South	Community Commercial	C-2 <i>Community Shopping Center District</i>	Vacant
East	General-heavy Commercial	C-6 <i>General Heavy Commercial</i>	Convenience store
West	General-heavy Commercial	C-6 <i>General Heavy Commercial</i>	Motel

ENVIRONMENTAL FINDING

The proposed project was determined to be exempt from CEQA on August 31, 2011, under a Class 1 and Class 32 Categorical Exemption. The Section 15301/Class1 exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Under the Section 15332/Class 32 exemption, in-fill development that meets the following conditions is exempt from the California Environmental Quality Act (CEQA): a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, c) the project site has no value as habitat for endangered, rare or threatened species, d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and e) the site can be adequately served by all required utilities and public services. The project consists of a proposed night club use in an existing building within the City limits and is consistent with the 2025 Fresno General Plan policies. The property is zoned C-6 which is consistent with the 2025 General Plan and West Area Community Plan land use designation of General-heavy Commercial. The operation of a night club on this site is allowed within the designated zone district. The site has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 1 and Class 32 Categorical Exemptions. No adverse environmental impacts would occur as a result of the proposed project.

BACKGROUND / ANALYSIS

The applicant, Manuel Perales on behalf of Yosemite Falls Cafe, filed Conditional Use Permit Application No. C-11-015 requesting authorization to allow for the operation of a "Night Club" in an existing building. The subject property contains an existing restaurant, namely, the Yosemite Falls Café; the location will continue to operate as a restaurant, in addition to the proposed night club. The restaurant has an existing Alcohol Beverage Control license which allows for the on-site consumption of beer, wine and distilled spirits (ABC Type 47 license). The project site is located on the north side of West Ashlan Avenue between North Blythe Avenue and State Route 99. The site is zoned C-6 (*Heavy Commercial District*). The proposed project was reviewed under the provisions of the recently adopted text amendment as related to restaurants, taverns and night clubs. Pursuant to that text amendment, this project has been scheduled for review by the Fresno City Planning Commission.

A night club is defined, per section 12-105.N.0.5 of the Fresno Municipal Code (FMC), as a facility that provides a dance floor and live or recorded music for customer dancing, and may or may not provide entertainment, such as live performances of the arts (music, comedy, readings, dance, plays, etc.). A night club differs from either a restaurant or tavern in that dancing by the customer is permitted. The serving of food or alcoholic beverages is optional.

Existing ABC license

The subject site has an existing Type 47 Alcoholic Beverage Control (ABC) license, which authorizes the sale of beer, wine and distilled spirits for on-site consumption.

Restaurant & Night Club

The applicant is proposing to operate as a restaurant seven days a week from 6:00 a.m. to 1:00 a.m. The applicant is also proposing to be allowed to operate as a night club seven days a week from 10 p.m. to 1:00 a.m. The applicant's Operational Statement dated August 31, 2011, indicates that the night club may not operate every night. Though the applicant may not operate the night club seven days a week, the subject application authorizes the operation of a night club seven days a week.

Multiple Phases of Operation

Multiple phases of operation, e.g. a restaurant and night club within the same building, are allowed pursuant to section 12-326.F.2 of the FMC. The applicant is proposing to operate a night club within the "Lounge", "Dining 3" and "Banquet Room" rooms noted on Exhibit F dated February 1, 2011. During the hours the establishment is operating as a night club, no one under 21 is allowed to enter or remain within those room(s) being used as a night club. During the hours the establishment is operating as a night club, the operator is allowed to continue to serve dinner to guests under the age of 21 in those room(s) not being used as a night club, i.e. within the "Dining 1" and "Dining 2" rooms. The applicant will need to provide adequate security to ensure that those under the age of 21 do not enter the night club room(s).

Time to Stop Sales, Service and Consumption of Alcohol

Restaurant

Table I under section 12-326.E.3 of the FMC indicates that for a restaurant serving alcohol, the time to stop sales, service and consumption of alcohol is 12:30 a.m., nightly.

Night Club

Table III under section 12-326.E.3 of the FMC indicates that for a night club, within the C-6 zone district, the time to stop sales, service and consumption of alcohol is 2:00 a.m. It is noted, however, pursuant to the Operational Statement dated August 31, 2011, the night club is proposed to be allowed to operate seven days a week, from 10:00 p.m. to 1:00 a.m.; said Operational Statement states that the night club may not operate every night.

Music

Pursuant to the conditions of approval for the project, amplified music is limited to the indoor area of the site. Dancing and/or a band on the patio is not allowed.

Music played on the patio must comply with the noise requirements of the Fresno Municipal Code. Pursuant to Section 10-106 of the FMC, any sound exceeding the ambient noise level at the property line by more than five decibels (dbs) shall be deemed to be prima facie evidence of a violation. The ambient noise level for commercial property is 65 dbs; therefore, more than 70 dbs at property line is considered a violation.

Parking

The square footage of the subject building is approximately 7,600 square feet. Pursuant to Fresno Municipal Code 12-306.I.2.2.d, the parking requirement for a night club is one space per 75 sq. ft. of gross floor area. Additionally, pursuant to the same section, the parking requirement for a restaurant is 32 spaces for the initial 4,000 sq. ft. of the building, plus 1 space for each 75 square feet in excess of 4,001 sq. ft.

The applicant is proposing to operate a night club within the "Lounge", "Dining 3" and "Banquet Room" rooms noted on Exhibit F dated February 1, 2011. Said rooms total approximately 3,200 square feet, which requires 42 spaces. The remaining 4,400 square feet of the building will be used for restaurant purposes and requires 37 stalls.

Lot Line Adjustment No. 2007-19 (LLA) was previously processed for the subject property and separated the restaurant and the adjacent motel onto two separate parcels. A mutual easements covenant was

prepared for said LLA and enables shared parking between the subject property and the adjacent motel property. The exhibit within said LLA depicted 197 parking spaces on the subject property and the adjacent motel property combined.

Pursuant to section 12-306.I.2.2.g of the FMC, for a motel, there shall be one parking space for every individual sleeping room or unit. There are 121 rooms within the adjacent hotel. As such, with the proposed use, the site requires 200 parking spaces (121 for the motel, 42 for the night club, 37 for the restaurant). As noted within the conditions of approval, the applicant is required to provide a site plan which provides 200 parking spaces or obtain a minor deviation, pursuant to section 12-407 of the FMC, allowing for a 10% reduction in required parking.

Fresno Police Department

The Fresno Police Department has conditioned the proposed project subject to their letter dated August 31, 2011. These conditions address a myriad of issues related to the operation of alcohol-related uses, including employee education, security, video surveillance, and enforcement procedures. The applicant must show compliance with all conditions prior to commencing the new night club operations.

DISTRICT 1 PLAN IMPLEMENTATION COMMITTEE

The District 1 Plan Implementation Committee recommended approval of Conditional Use Permit Application No. C-11-015 at their meeting on March 8, 2011.

NOTICE OF PLANNING COMMISSION MEETING

The Development and Resource Management Department mailed notices of this Planning Commission hearing to all surrounding property owners within 500 feet of the subject property, pursuant to Section 12-326-G-2 of the Fresno Municipal Code.

FINDINGS

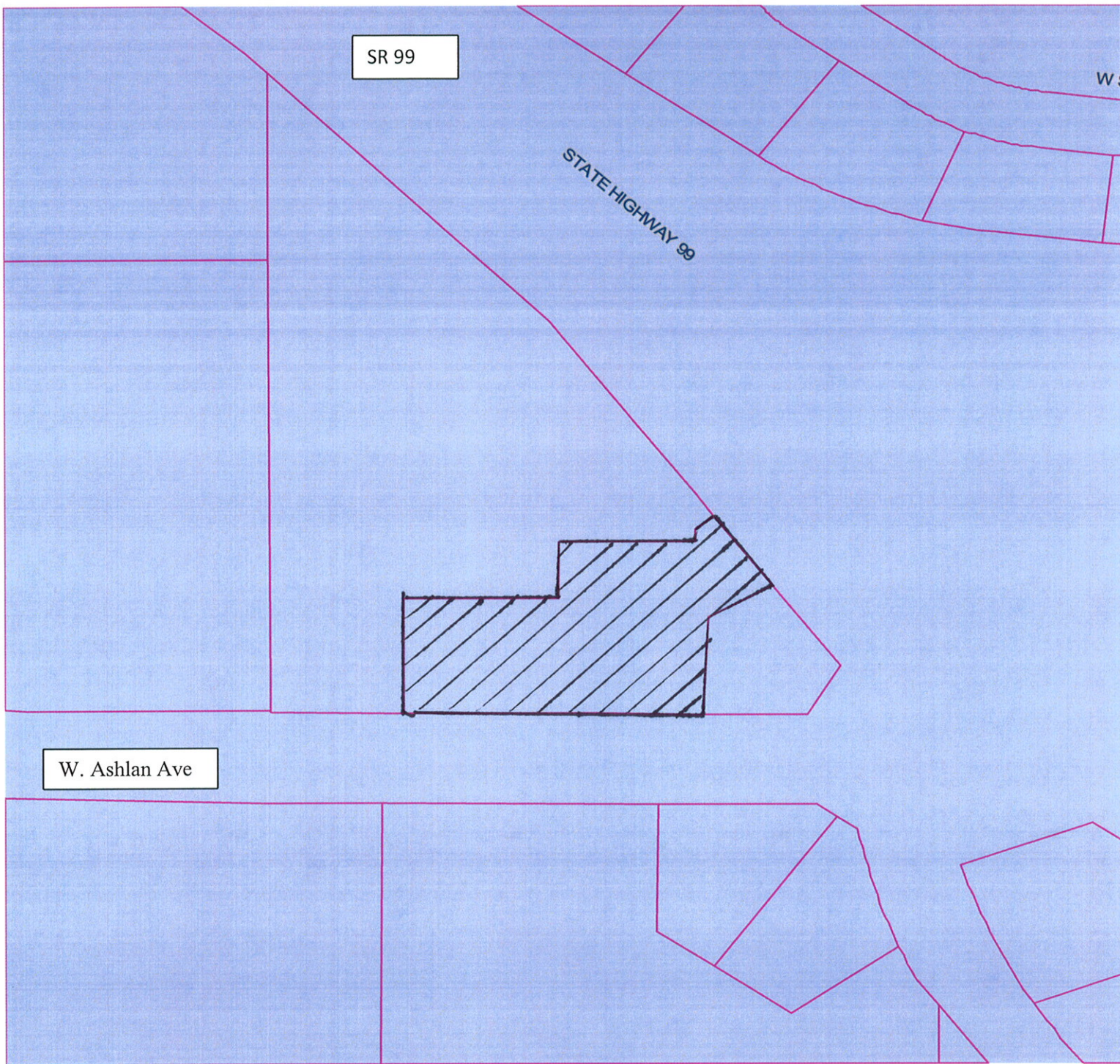
The appropriateness of the proposed project has been examined with respect to its consistency with the goals and policies of the 2025 Fresno General Plan and the West Area Community Plan; its compatibility with surrounding existing or proposed uses; and, its avoidance or mitigation of potentially significant adverse environmental impacts. Conditional Use Permit Application No. C-11-015 will comply with all applicable codes, including parking, landscaping, walls, etc.

No special permit may be issued unless it is found that the privilege exercised under the permit, conforms to the findings of 12-405-A-2 of the Fresno Municipal Code. Based upon analysis of the conditional use permit application, staff concludes that all of the required findings can be made for Conditional Use Permit Application No. C-11-015.

Findings per Fresno Municipal Code Section 12-405-A-2	
<i>a. All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i>	
Finding a:	Conditional Use Permit Application No. C-11-015 will comply with all applicable codes, including parking, landscaping, walls, etc., furthermore, the use is proposed within an existing building used for a restaurant.

b. <i>The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i>	
Finding b:	The subject property is accessed from an arterial street (West Ashlan Avenue); the adjacent street was assessed during the initial development of the subject site to ensure that the development would have less than significant impacts on traffic and the surrounding neighborhood.
c. <i>The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses which are subject to the provision of Section 12-306-N-30 of the FMC.</i>	
Finding c:	The subject site was intended to function with commercial uses. In addition, the applicant will be required to comply with the conditions of approval as required by the Police Department that will stipulate certain requirements that must be met by the applicant. These conditions are intended to help protect the public health, safety and welfare of patrons and neighbors, alike.

Attachments: Vicinity Map
 2008 Aerial Photograph of site
 Noticing Map (500 foot radius)
 Operational Statement dated August 31, 2011
 Exhibit A, Site Plan, dated February 1, 2011
 Exhibit F, Floor Plan, dated February 1, 2011
 Conditions of Approval for the project dated September 7, 2011
 Conditions from the Police Department dated August 31, 2011
 Environmental Assessment No. C-11-015 dated August 31, 2011



LEGEND



Subject Property

VICINITY MAP

CONDITIONAL USE PERMIT NO. **C-11-015**

PROPERTY ADDRESS

4248 West Ashlan Avenue



Not To Scale

A.P.N.: 510-100-48

ZONE DIST.: C-6

BY/DATE:



2008 Aerial

Subject Property

51046016

request ID: C-11-015 500

51046014

51010014

51010015

51010016

51010038

W RICHERT AVE

51010012

51010013

W SWIFT AVE

51010020

51010021

51010022

51010023

51010039

51010047S

51010040

51010048S

51010029

WASHLAN AVE

N 99 HWY

51124001

51124019

51124003

51124007

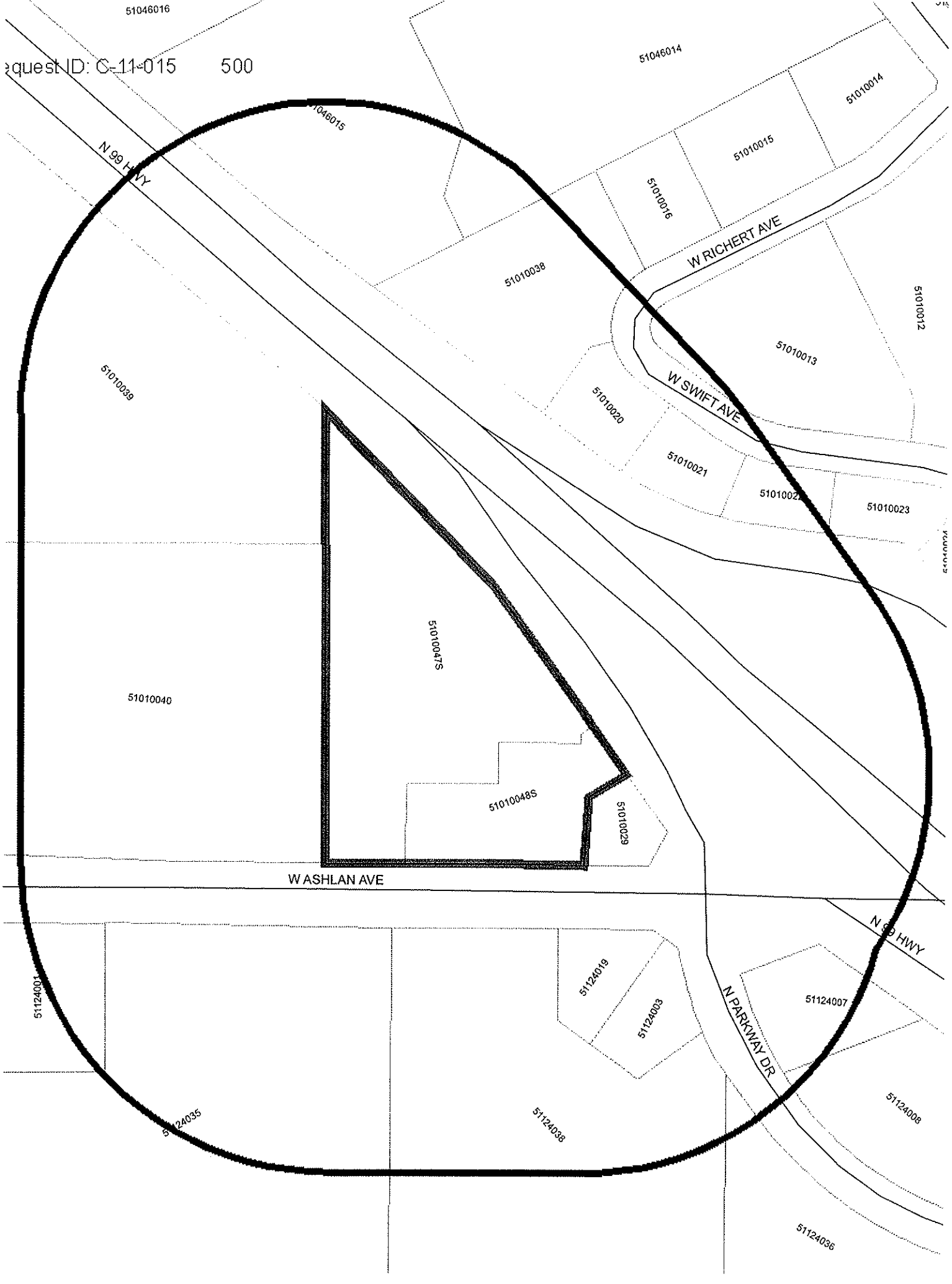
N PARKWAY DR

51124008

51124038

51124035

51124036



Operation Statement



RECEIVED

AUG 31 2011

DEVELOPMENT DEPARTMENT
CITY OF FRESNO

To Police Dept and City of Fresno

Request upgraded C.U.P at Yosemite Falls Café 4248 W. Ashlan Fresno, Ca. 93722.

Details regarding our request to upgrade our C.U.P. We are a family restaurant that is open for breakfast at 6:00AM and we serve lunch and dinner until 11PM-or 12:00 AM. We will continue to serve breakfast lunch and dinner; we will always serve food until the doors are locked.

We will have occasional entertainers, karaoke, or a band and our customers have a great time dining and listening to music.

We would like a dance permit that allows us to occasionally have a band and dancing. It will most likely be on a Friday or Saturday. We might have entertainment on others days, very seldom but please permit us to have dancing any day.

We will not have dancing before 10 PM, if we promote or allow dancing, it will be after 10PM and our guests must be 21 years of age.

We will have bands and entertainment on certain days, music will be for listening only and it will be business as usual for guests or families. We will only promote or allow dancing on occasion, but after 10 PM. must be 21 years of age to enter the room or area we are allowing dancing.

We will continue to serve families and guests that are not 21 years of age in the food dining areas away from the music. Security and management will monitor who is coming in to the area where music is playing, we will check there ID's and make sure every person is 21 years of age.

Yosemite Falls Café will always be a family restaurant serving breakfast lunch and dinner. We will keep our same hours of operation, closing at 11:00 PM or Midnight, on occasion until 1:00 AM.

Please consider these changes and allow us to have a dancing permit. (10 PM Until 1:00 AM)

We would also like to have bands on the patio on occasion, never past 10:00 PM and we will be respectful to the surrounding neighbors. The music level will be low enough so it won't disrupt other merchants or residents.

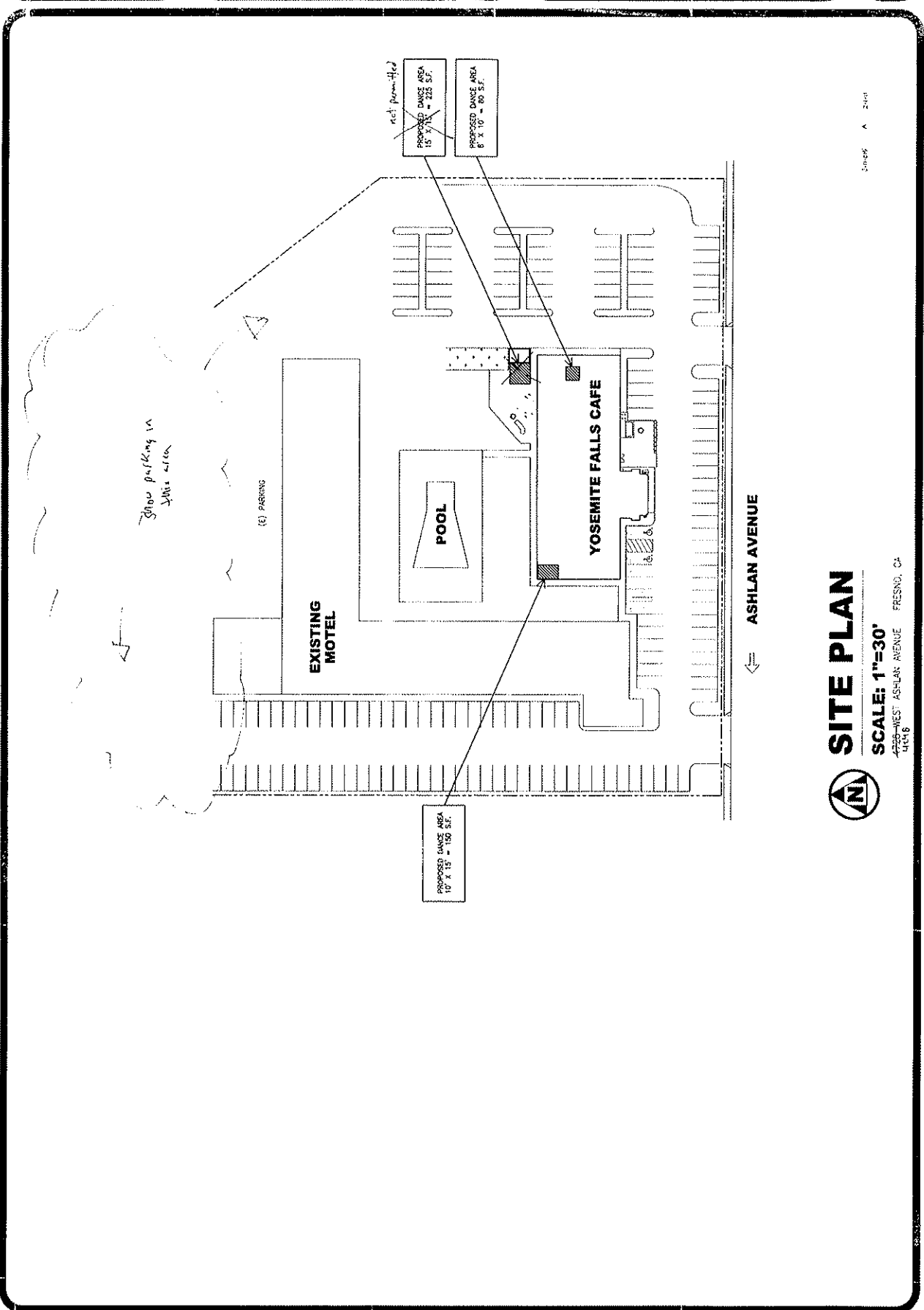
Exhibit A

job no.	00-22-000	date	01-25-2011	drawn by	A. JACKSON
revisions					

THE DRAWING CENTER
 456 CLONG AVE. SUITE 1
 DOWNS, CA 95601
 TEL: (559) 529-7050
 FAX: (559) 529-7056
 E-MAIL: drawing@the-drawing-center.com

DANCE PERMIT FOR YOSEMITE FALLS CAFE
 4728 WEST ASHLAN AVENUE, FRESNO, CA

A-1
 SHEET NO.



SITE PLAN
 SCALE: 1"=30'
 4728-WEST ASHLAN AVENUE FRESNO, CA
 4416

PUE

Exhibit F

REVISIONS:

DATE	BY	DESCRIPTION
01-25-2011	A. JOHNSON	DR. BY

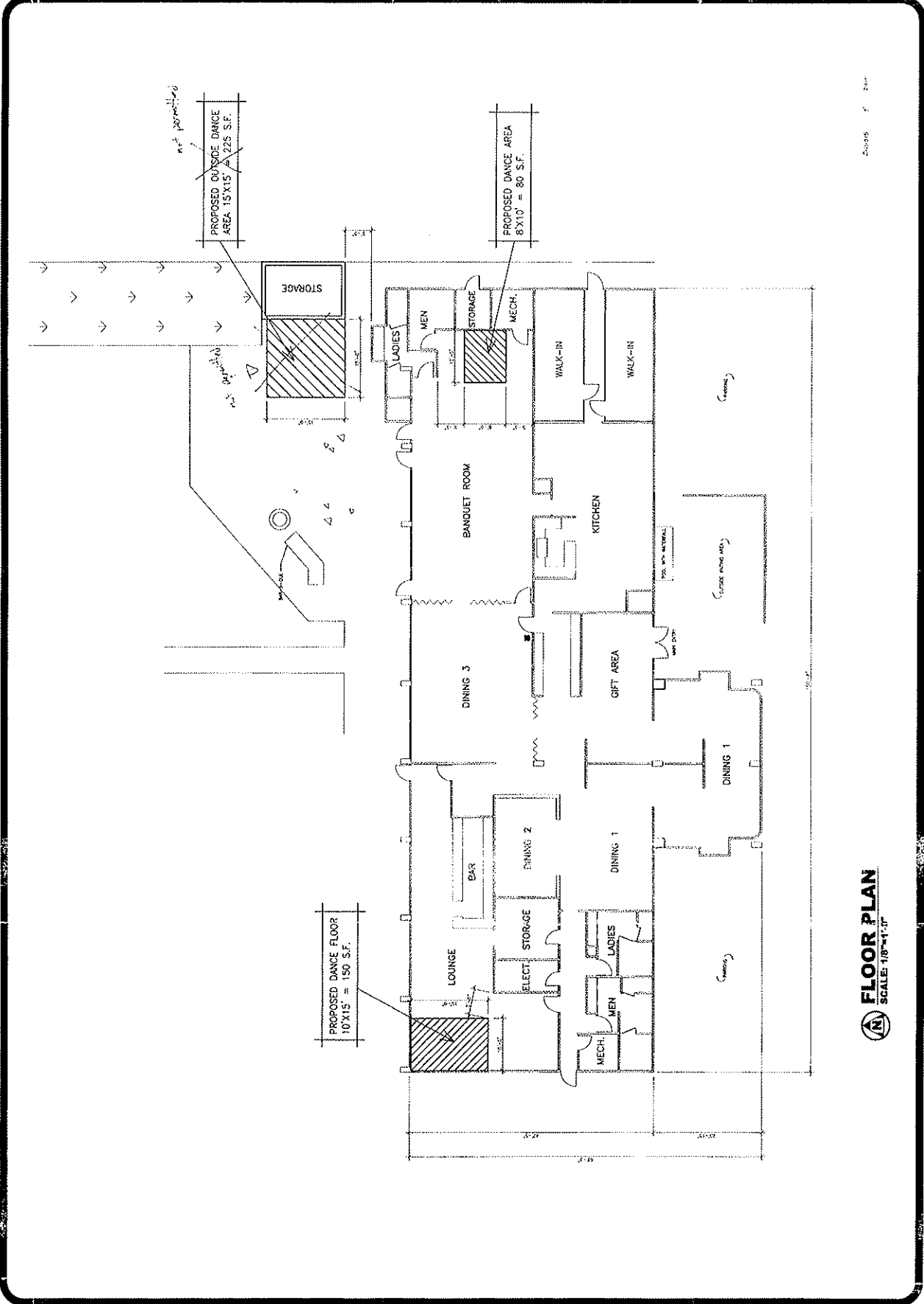
THE DRAWING CENTER

1566 CLAY AVENUE, SUITE 1
CLAY, CA 95602
TEL: (916) 925-7155
FAX: (916) 925-7156

DANCE PERMIT FOR YOSEMITE FALLS CAFE

1728 WEST ASHUR AVENUE, FRESNO, CA 93704
TEL: (559) 225-7155

Sheet No. **A-2**



FLOOR PLAN
SCALE: 1/8"=1'-0"

**CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT**

CONDITIONS OF APPROVAL

SEPTEMBER 7, 2011

**CONDITIONAL USE PERMIT
APPLICATION NO. C-11-015
4248 WEST ASHLAN AVENUE**

Conditional Use Permit Application No. C-11-015 is subject to the following conditions of approval:

PART A - PROJECT INFORMATION

1. Assessor's Parcel No: 510-100-48
2. Job Address: 4248 West Ashlan Avenue
3. Street Location: Located on the north side of West Ashlan Avenue between North Blythe Avenue and State Route 99
4. Existing Zoning: C-6 (*Heavy Commercial District*) zone district
5. Planned Land Use: General-heavy Commercial
6. Plan Areas: The 2025 Fresno General Plan and the West Area Community Plan
7. Project Description: Conditional Use Permit Application No. C-11-015 is a request to allow for the operation of a "Night Club" in an existing building. The subject property contains an existing restaurant, namely, the Yosemite Falls Café, which has an existing Type 47 ABC license (on-site consumption of beer, wine and distilled spirits). The site will continue to operate as a restaurant, in addition to the proposed night club

A. General Conditions

1. Development shall take place in accordance with the C-6 (*Heavy Commercial District*) zone district as defined in Section 12-222 of the Fresno Municipal Code (FMC).
2. Development shall comply with Section 12-326 of the FMC related to restaurants and night clubs.

3. Exercise of the special permit shall comply with Exhibits A and F, dated February 1, 2011. Transfer all red line notes, etc., shown on all original site plan exhibits to the final corrected site plan.
4. Exercise of the special permit shall comply with the Operational Statement dated August 31, 2011.

It is noted, however, that dancing and/or bands on the patio are not permitted. Amplified music shall be limited to the indoor area of the site.

Music played on the patio must comply with the noise requirements of the Fresno Municipal Code (FMC). Pursuant to Section 10-106 of the FMC, any sound exceeding the ambient noise level at the property line by more than five decibels (dbs) shall be deemed to be prima facie evidence of a violation. The ambient noise level for commercial property is 65 dbs.

5. Comply with the letter from the Fresno Police Department dated August 31, 2011.

OFF-STREET PARKING

6. The square footage of the subject building is approximately 7,600 square feet. Pursuant to Fresno Municipal Code 12-306.I.2.2.d, the parking requirement for a night club is one space per 75 sq. ft. of gross floor area. Additionally, pursuant to the same section, the parking requirement for a restaurant is 32 spaces for the initial 4,000 sq. ft., plus 1 space for each 75 square feet in excess of 4,001 sq. ft.

The applicant is proposing to operate a night club within the "Lounge", "Dining 3" and "Banquet Room" rooms noted on Exhibit F dated February 1, 2011. Said rooms total approximately 3,200 square feet, which requires **42** spaces. The remaining 4,400 square feet of the building will be used for restaurant purposes and requires **37** spaces.

Lot Line Adjustment No. 2007-19 (LLA) was previously processed for the subject property and separated the restaurant and the adjacent motel onto two separate parcels. A mutual easements covenant was prepared for said LLA and enables shared parking between the subject property and the adjacent motel property. The exhibit within said LLA depicted 197 parking spaces on the subject property and the adjacent motel property combined.

Pursuant to section 12-306.I.2.2.g of the FMC, for a motel, there shall be one parking space for every individual sleeping room or unit. There are **121** rooms within the adjacent hotel. As such, with the proposed use, the site requires **200** parking spaces (121 for the motel, 42 for the night club, 37 for the restaurant). Provide an updated site plan which provides 200 parking spaces on the subject property and adjacent motel property or submit an application and obtain a minor deviation, pursuant to section 12-407 of the FMC, allowing for a 10% reduction in required parking.

DANCING

7. The dancing area is allowed within the interior of the building only (within the "Lounge", "Dining 3" and "Banquet Room" rooms only). Dancing on the patio is not allowed. Bands on the patio are not allowed. Amplified music shall be limited to the indoor area of the site.

TIME TO STOP SALES SERVICE AND CONSUMPTION OF ALCOHOL

Restaurant

8. Table I under section 12-326.E.3 of the FMC indicates that for a restaurant serving alcohol, the time to stop sales, service and consumption of alcohol is 12:30 am, nightly.

Night Club

9. Table III under section 12-326.E.3 of the FMC indicates that for a night club, within the C-6 zone district, the time to stop sales, service and consumption of alcohol is 2:00 a.m. It is noted, however, pursuant to the Operational Statement dated August 31, 2011, the night club is proposed to be allowed to operate seven days a week, from 10:00 p.m. to 1:00 a.m. Though the applicant may not operate the night club seven days a week, the subject application authorizes the operation of a night club seven days a week.

Multiple Phases of Operation

10. The applicant is proposing to operate a night club within the "Lounge", "Dining 3" and "Banquet Room" rooms noted on Exhibit F dated February 1, 2011. No other rooms are allowed to be used for a night club. Adequate security shall be provided to ensure that those under the age of 21 do not enter the night club room(s).

During the hours the establishment is operating as a night club, no one under 21 is allowed to enter or remain within those room(s) being used as a night club. During the hours the establishment is operating as a night club, the operator is allowed to continue to serve dinner to guests under the age of 21 in those room(s) not being used as a night club, i.e. within the "Dining 1" and "Dining 2" rooms.

Hours of Operation

Restaurant

11. The applicant is proposing to operate as a restaurant seven days a week from 6:00 a.m. to 1:00 a.m. As noted above, the time to stop sales, service and consumption of alcohol is 12:30 am, nightly.

Night Club

12. The applicant is proposing to operate as a night club seven days a week from 10 p.m. to 1:00 a.m. The Operational Statement dated August 31, 2011, indicates that the night club may not operate every night. Though the applicant may not operate the night club seven days a week, the subject application authorizes the operation of a night club seven days a week.

Approval of this special permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. This special permit is granted, and the conditions imposed, based upon the Operation Statement provided by the applicant. The Operation Statement is material to the issuance of this special permit. Unless the conditions of approval specifically require operation inconsistent with the Operation Statement, a new or revised special permit is required if the operation of this establishment changes or becomes inconsistent with the Operation Statement. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the special permit or any other enforcement remedy available under the law.

Transfer all red line notes, etc., shown on all original site plan exhibits to the final site plan. To complete the back-check process for relative to planning and zoning issues, submit two copies of the corrected, final site plan, and any required covenants and/or studies or analyses to the Planning Division, Current Planning Section, for final review.

Please note that this project may be subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies, those determined through site plan review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community, and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

All code requirements, are mandatory and may only be modified by variance, provided the findings pursuant to Fresno Municipal Code (FMC) Section 12-405.A can be made.

No uses of land, buildings, or structures other than those specifically approved pursuant to this site plan shall be permitted. **(Include this note on the site plan.)**

The exercise of rights granted by this special permit must be commenced by September 7, 2015 (four years from the date of approval). There is no exception.

RESTAURANT/NIGHT CLUB ABCUP CONDITIONS

August 31, 2011

City of Fresno, Development Department
Director of Development & Resource Management Department
Special Permit, Conditional Use Permit
2600 Fresno Street
Fresno, California, 93721-3604

Attn. Israel Trejo, Planning Division

Re: SPECIAL PERMIT NO. C-11-015 ABCUP
Applicant: Manuel Perales
DBA: Yosemite Falls Cafe
Address: 4248 West Ashlan Avenue
Fresno, Ca. 93722
A.P.N. 510-100-48

Dear Mr. Trejo,

The City of Fresno has requested that the Fresno Police Department review the Conditional Use Permit to operate a Restaurant with the retail sale of alcohol for on-site consumption and a Night club as defined by Fresno Municipal Code, sections 12-105-R-5 and 12-105-N-0.5 at 4248 West Ashlan Avenue. The property has been zoned C-6 which permits the operation of a Restaurant and Night Club pursuant to the requirements of FMC, sections 12-304, 12-326 and 12-327. We understand that along with this CUP application, the applicant has a type 47 license which allows for the sale of beer, wine and distilled spirits for consumption on the licensed premises.

We understand from the Operational Statement sent/dated to FPD on August 31, 2011, that the applicant intends to operate the establishment as stated below:

Restaurant Operation: 7 Days of week

Restaurant Hours of Operation: 6:00 a.m. to 1:00 a.m., 7 Days of week

Night club Operation: 7 Days of week
(No One under 21 permitted)

Night club Hours of Operation: 10:00 p.m. to 1:00 a.m., 7 Days of week
(No One under 21 permitted)

During the hours the establishment is operating as a night club, no one under 21 is allowed to enter or remain within those room(s) being used as a night club. During the hours the establishment is operating as a night club, the operator is allowed to continue to serve dinner to guests under the age of 21 in those room(s) not being used as a night club. Adequate security shall be provided to ensure that those under the age of 21 do not enter the night club room(s).

The Fresno Police Department's primary concern with the application is the propensity of the premises to generate calls for police service which indicates potential activities on the premises that are detrimental to the public welfare or injurious to property or improvements.

As you know, to approve any Conditional Use Permit, the City must make the following findings:

1. All applicable provisions of the Fresno Municipal Code are complied with and the site of the proposed use is adequate in size and shape to accommodate the use, including, all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,
2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,
3. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. This third finding shall not apply to uses which are subject to the provisions of Section 12-306-N-39 of the Fresno Municipal Code (Regulating Adult Businesses).

The conditions are established to ensure public safety, and to minimize any impact for the surrounding area. This CUP allows for **the operation of a Restaurant serving alcohol and Night club**. We request the following conditions be included as Conditions of Approval for Conditional Use Permit Application No. **C-11-015**. These conditions will maintain an environment that is least likely to generate public complaints and calls for service. The Fresno Police Department is not in opposition of this Conditional Use Permit, provided the applicant agrees to the listed conditions.

If the following conditions are not included as conditions of approval of CUP No. **C-11-015**, the Fresno Police Department shall oppose the approval of this Conditional Use Permit, and shall appeal such approval to the Planning Commission. As such, we request that you provide Officer Todd Fraizer with notice of the Director's decision regarding this Conditional

Use Permit as well as a complete copy of the conditions of approval, should the Director approve the Conditional Use Permit.

1. Fresno Municipal Codes

The applicant shall comply with all applicable provisions of the Fresno Municipal Codes ("FMC"), including but not limited to:

- FMC 9-502 (Amusement Devices - Permit Required)
- FMC 9-1803 (Hours of Operation Billiard Hall)
- FMC 9-1804 (Restriction on Attendance of Minors in Billiard Rooms)
- FMC 9-1805 (Minors allowed: Family Billiard Rooms)
- FMC 10-105 (Noise Ordinance)
- FMC 10-708 (Unlawful Nuisances - High Calls for Police Service)
- FMC 12-306-N-30 Limitations on Adult Business Activities. Applicant shall also verify with the Planning Division that Adult Business Activities are permitted in the zone district where the applicant seeks to operate his/her business.

A current version of the Fresno Municipal Code may be viewed at the City of Fresno's website: www.Fresno.gov. The link to the FMC is located on the Home Page of that website.

2. State and Federal Law

The applicant shall comply with all applicable state, federal, and local law, including but not limited to the following California Business and Professions Code sections and the California Department of Alcoholic Beverage Control rules:

- BP 24046 (Required to Post ABC License on Premises)
- BP 25612.5 (Loitering, Open Alcoholic Beverage Containers, Consuming Alcoholic Beverages on Premises, Exterior Lighting, Litter Removal, Graffiti Removal, Signs and Barriers in Windows and Doors, Public Phones Blocked From Incoming Calls, Areas to Display Harmful Matter, Required Copies of Operating Standards Available for Public Viewing)
- BP 25665 (Minors Remaining in Public Premises)
- ABC Act Rule 106 (No Buy One Get One Free Drinks)
- ABC Act Rule 107 (No One Under 21 Allowed Signs Posted)
- ABC Act Rule 139 (Interior Lighting Required for Identification of Patrons)

3. ABC Education

Any and all employees hired to sell alcoholic beverages shall provide evidence that they have either:

- (1) Completed training from the State of California Department of Alcoholic Beverage Control--Fresno District Office-administered "Leadership and Education in Alcohol and Drugs" (LEAD) Program as confirmed by receipt of an ABC-issued certificate of completion; or,
- (2) Completed equivalent training acceptable to the ABC-- Fresno District Office to ensure proper distribution of beer, wine and distilled spirits to adults of legal age.

If any prospective employee designated to sell alcoholic beverages, tobacco or inhalants does not currently have such training then:

- (1) The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the final approval of the CUP, that a date certain has been scheduled with the local ABC Office for the prospective employees to take the LEAD Program course; and
- (2) Within 30 days of taking the course the employee(s) or responsible employer shall deliver each required LEAD Program Certificate evidencing completion of said course.

4. Contests or Promotions

At least two weeks prior to the event, the establishment shall notify the District Commander, or his/her designee of any promotional or special events. In addition, the establishment shall obtain written approval that the current Security Plan is adequate to address security issues that may arise from the event or promotion or approval of a new Security Plan that will be in place for the promotional or special event.

5. Security Plan.

Prior to the approval of this Conditional Use Permit, the establishment shall prepare and submit to the District Commander a security plan for approval. Approval of the security plan by the District Commander or his/her designee shall not be unreasonably denied. The contents of the Security Plan shall be incorporated as conditions of approval of CUP **C-11-015**. The establishment shall be responsible to have the District Commander or his/her designee re-approve the security plan annually running from the anniversary date of the final approval of the CUP. The establishment is responsible for providing both the District Commander and the Planning and Development Department a copy of the approved security plan.

All establishments Security Plan shall:

- Identify the establishment's designated contact person for all safety and security management and shall provide the telephone numbers where the contact person may be reached 24 hours a day, seven days a week.

- Confirm that a manager will be on duty during business hours and will be responsible for monitoring and controlling the behavior of patrons.
- Identify all managers of the establishment and their contact telephone numbers.
- Confirm that all bartenders and other employees shall be trained to recognize the symptoms of an obviously intoxicated patron, to refuse serving alcoholic beverages to obviously intoxicated patrons, and to report emergencies to the manager on duty and to law enforcement.
- Confirm that first aid supplies and operational fire extinguishers are located in the kitchen (if applicable), service areas and the manager's office.
- Confirm that the burglar and fire alarm is monitored by a security company 24 hours a day, seven days a week.
- Identify an adequate number of acceptable interior security personnel and exterior security personnel who will monitor and control the behavior of customers inside and outside the building, the parking lot and any adjacent property under the establishment's control. The security personnel may be employees of the establishment or licensed security personnel retained from a security firm.
- Confirm that the security personnel shall regularly monitor the parking lot and any adjacent property under the establishment's control to ensure the areas are (a) free of people loitering or causing a disturbance and (b) are cleared of patrons and their vehicles one-half hour after closing.

The establishment may receive from the Fresno Police Department a form of a security plan that the establishment may refer to in preparing its security plan.

The establishment shall correct any safety or security problem or security plan violation as soon as possible after receiving written notice of such problem from the Fresno Police Department. After the initial security plan is approved and implemented, it is the responsibility of the owner or owner's representative to contact the Fresno Police Department to inquire about police calls for service or public safety problems at the location. Contact may be made in person, by telephone or by electronic mail. Review of police calls for services may be conducted at any time by the Fresno Police Department.

The applicant will maintain a copy of the current Security Plan and shall present the Security Plan immediately upon request by a peace officer.

If it is determined that police calls for service become "Frequent" (see definition below) the Fresno Police Department may initiate proceedings to amend these conditions to require additional state licensed uniformed security and/ or to recommend suspension or revocation proceedings.

Additionally, during all hours the establishment operates as a night club, there shall be a minimum of two (2) state licensed, uniformed security guards or one (1) state licensed uniformed security guard per one hundred, of the total number of guests permitted, whichever is greater, on the premises at all times. The total number of guests is limited by the permitted occupancy as determined by the Fresno Fire Department.

For purposes of determining the total number of state licensed, uniformed security guards required, the applicant shall round to the nearest increment of 100 guests. For instance, if the permitted occupancy is 351 persons, the establishment shall be required to have four (4) state licensed, uniformed security guards. However, if the permitted occupancy is 345 persons, the establishment shall be required to have three (3) state licensed uniformed security guards.

All on-duty licensed security guards shall comply with the uniform requirements set forth in California Business & Professions code section 7582.26.

"Frequent" as used in this subsection means police response is occurring more than 1.50 times than the average number of such responses for property of a similar size in character in the same "policing district" established by the police chief. (See FMC Sections 10-708(g) and 12.326-H.)

6. **Dance Area**

Patrons may access any area used for dancing, from outside the premises of the establishment, only through entrances that are manned and controlled, at all times, by at least one employee of the establishment.

Dancing on the patio is not permitted.

7. **Video Surveillance**

A fully functional and operating color digital video recorder (DVR) surveillance and camera system shall be in place to record the activities of patrons on the premises. The interior of the business must have at least one camera placed to focus on each area where alcoholic beverages are being dispensed (this shall include any outside patio area where alcoholic beverages are dispensed). Additionally, there shall be at least one camera placed to focus on each of the following areas; front door(s) (both inside and outside) and/or entry area, any area outside where patrons wait to enter the establishment and the majority of the open floor space area in the establishment. The DVR and cameras must be monitored daily to ensure they are operating as specified in this CUP.

The DVR storage capacity (memory) shall be for at least two weeks (fourteen calendar days). The DVR must continuously record, store, and be capable of playing back images and be fully functional at all times (24 hours a day, seven days a week). DVR recordings

of and/or suspected criminal activity (*either occurring at and/or related to Yosemite Falls*) shall be provided to the Fresno Police Department within 24 hours of the initial request. There shall also be an employee on-duty at all times during business hours that has been trained in the operation of the DVR as well as its downloading capabilities.

8 Property Responsibility

Frequent responses by the FPD arising out of or relating to the operation or management of the real property owned or controlled by the permittee, causing any combination of the following: animal disturbances; violent criminal acts; illegal consumption of intoxicants in public view; gaming activities; and juvenile disturbances, or any of the other activities set forth in the Fresno Municipal Code section 10-708(g) may result the commencement of CUP revocation proceedings pursuant to FMC, section 12-326-H and 12-405-E. In addition to recommending the commencement of revocation proceedings, the FPD may pursue any of the other remedies set forth in FMC, section 10-710, including assessing fines against the proprietor for the violations of the Management of Real Property Ordinance.

“Frequent” is defined by FMC Section 12-326-H-1-a.

9. Revocation of Conditional Use Permit

The City is permitted to revoke a Conditional Use Permit (CUP) for “good cause” pursuant to the procedures set forth in FMC, sections 12-326-H and 12-405-E. Applicant is strongly encouraged to review these FMC sections to understand the circumstances that constitute “good cause.”

10. Posting hours of operation and address

The owner and/or proprietor and /or applicant shall be responsible to conspicuously post the hours of operation for each phase type (i.e., restaurant, night club) near the entrance of the establishment. It shall be 8.5x11 inches in size, to be provided for by the City. This posting shall be made available to City officials upon request. Additionally, the address of each facility shall be posted in compliance with all City codes.

11. Posting Property

The applicant shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing or loitering will be in violation of municipal ordinances. The applicant must send a letter to the Fresno Police Department, signed and dated by the applicant, every 180 days that authorizes FPD peace officers to enter the applicant’s real property and/or establishment to enforce against the aforementioned activities at the business. The applicant shall also be familiar with B&P 25753 and B&P 25755 that authorizes Law Enforcement to inspect their premises. The owners and employees are responsible for abating those activities when they occur during business hours.

The establishment shall not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control. No alcoholic beverage will be consumed on any property adjacent to the premises (i.e., parking lot and sidewalks). If the alcoholic beverages are consumed on property not owned or controlled by the applicant, the applicant shall immediately report such consumption to the Fresno Police Department.

The establishment shall not allow any loitering on building premises or any adjacent property under its ownership or control.

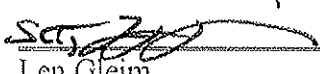
The establishment shall not allow any gambling on building premises or any adjacent property under its control.

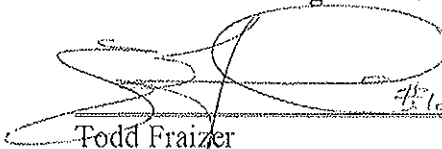
There shall be no amusement devices or billiard tables maintained upon the premises without the proper permits issued through the City of Fresno Business Tax Division.

12. The establishment shall ensure that all employees are aware of and comply with these conditions. The establishment shall have each employee sign a written acknowledgment that he/she has reviewed and understood each of these conditions. Each written acknowledgement shall be maintained by the establishment and made available to the Fresno Police Department upon reasonable request.

FRESNO POLICE DEPARTMENT


Michael Reid 8-31-11
Fresno Police Department Date
Northwest District Commander


Len Gleim 8-31-11
Fresno Police Department Date
Northwest Investigations Supervisor


Todd Fraizer 8-31-11
Fresno Police Department Date
Northwest POP Officer

**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-11-015**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Manuel Perales
4248 West Ashlan Avenue
Fresno, CA 93722

PROJECT LOCATION: 4248 West Ashlan Avenue, north side of West Ashlan
Avenue between North Blythe Avenue and State Route 99
(APN: 510-100-48)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-11-015 requests
authorization to allow for the operation of a "Night Club" in
an existing building. The subject property contains an
existing restaurant, namely, the Yosemite Falls Café

This project is exempt under Sections 15301/ Class 1 and 15332/Class 32 of the State of California CEQA Guidelines.

EXPLANATION: Section 15301/Class1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.


Section 15332/Class 32 consists of projects characterized as in-fill development meeting the conditions described in this Section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

The project consists of a proposed night club use in an existing building (used as a restaurant) within the City limits and is consistent with the 2025 Fresno General Plan policies. The property is zoned C-6 which is consistent with the 2025 General Plan and West Area Community Plan land use designation of General-heavy Commercial. The operation of a night club on this site is allowed within the designated zone district. The site has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 1 and Class 32 Categorical Exemptions. No adverse environmental impacts would occur as a result of the proposed project.

Date: August 31, 2011

Prepared By: Israel Trejo, Planner

Submitted By:


Mike Sanchez, Planning Manager

City of Fresno
Development & Resource Mgmt. Department
(559) 621-8277